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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/535,429

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Guy Schott

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EXAMINER

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ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/535,429	<b>Applicant(s)</b> SCHOTT ET AL.	
	<b>Examiner</b> Steven Reynolds	<b>Art Unit</b> 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 December 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 1-15 are objected to because of the following informalities:

In claim 1, line 20, "the flap is in line" should be "the flaps are in line".

In claim 1, line 21-22, "the flap (4,5) upstands" should be "the flaps (4,5) upstand".

In claim 4, line 5, "attached to the bottom panel (2) at one end" should be "attached to the internal lateral panel (13) at one end". Appropriate correction is required.

In claim 6, line 4, "scoring line to the one of" should be "scoring line to one of".

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1-3, 5-11, 15, 16 and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lamare (EP 0693428) in view of DeNola (US 5,529,187). Lamare discloses packaging (See Figs 3, 5B) for protecting and locating a circular contour object such as an eyeglass lens, the packaging including a bottom panel (7); two box-sections, each including an external lateral panel (13) and an internal lateral panel (11), the internal lateral panel including an opening (15) for at least partial insertion of the

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object, each box-section being attached by an articulation (fold line 17) to the bottom panel along a respective one of a first two opposite edges (at fold lines 17 in Fig. 3), each box-section being configured to assume a first folded down position (See Fig. 3) in which the external lateral panel is in line with the bottom panel, and a first raised position (See Fig. 2) in which the external lateral panel upstands relative to the bottom panel; two flaps (panels 14) each attached by an articulation (fold lines 24) to the bottom panel along a respective one of a second two opposite edges (at fold lines 24 in Fig. 3) adjacent to the box-sections, each flap being configured to assume a second folded down position in which the flaps are in line with the bottom panel, and a second raised position in which the flaps upstand relative to the bottom panel against longitudinal ends of the box-sections; and means for maintaining the box-sections in the first raised position and the flaps in the second raised position (gussets 27 are the means for maintaining the box-sections); wherein, for each box-section, said external lateral panel has a first end of said external lateral panel connected by an articulation (17) to the bottom panel, and a second end of the external lateral panel connected by an articulation (fold line between 13 and 18) to a first end of an intermediate panel (18), wherein the intermediate panel also includes a second end connected by an articulation (fold line 20) to a first end of said internal lateral panel, wherein the internal lateral panel also includes a second end connected by an articulation (fold line between 11 and 19) to the bottom panel along the articulation between the first end of the external lateral panel and the bottom panel. Lamare discloses the claimed invention except for the specifics of the opening.

However, DeNola teaches a package comprising two box sections (30 and 32), each including an opening (openings 64 and 62), wherein each opening has at least two locating tongues (two tongues 66 and two tongues 60 in each of the two openings 64 and 62, respectively) juxtaposed to each other and attached to an internal panel at one end for the purpose of adding cushion to protect an article when its placed in the opening. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the openings of Lamare to include locating tongues as taught by DeNola in order to better protect the article by adding more cushioning.

Regarding the specific attachment of the tongues, it would have been obvious to one having ordinary skill in the art at the time the invention was made to attach the tongues by the end opposite the bottom panel in order to have the desired contact with the object. The tongues perform the same function whether attached to the panel at the sides or at the end. It has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Regarding claims 2, 3, 5-11 and 15, Lamare-DeNola discloses the bottom panel, the two box-section, the two flaps, and the means for maintaining the box-sections are made from one piece; the bottom panel is square; the locating tongues include at least one transverse scoring line (line between the tongues) over a length; each box-section is formed in one piece with the bottom panel by a rectangular panel connected by a first scoring line (17) to one of the first two opposite edges of the bottom panel, said rectangular panel including a second scoring line (fold line between 13 and 18)

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delimiting the external lateral panel, a third scoring line (fold line 20) delimiting the intermediate panel, a fourth scoring line (fold line between 11 and 19) delimiting the internal lateral panel, and said rectangular panel extending beyond the fourth scoring line by way of a fixing flap (19) fastened to the bottom panel such that the fourth scoring line is juxtaposed to the first scoring line; the fixing flap is glued to the bottom panel; the intermediate panel includes a longitudinal scoring line (line between panel 18 and fold line 20); a width of the external lateral panel is substantially equal to a width of the internal lateral panel; the width of the external lateral panel is substantially equal to the width of the internal lateral panel and said longitudinal scoring line is disposed substantially along a longitudinal median line of the intermediate panel; the means for holding the box-sections in the first raised position and the flaps in the second raised position include means (gussets 27 ) associated with the flaps and with the box-sections to hold the box-sections in the first raised position when the flaps are in the second raised position and means (at fold line 28) for holding the flaps facing each other against the box-sections; the flaps are each attached to the longitudinal ends of the box-sections by two gussets (27).

Regarding claim 16, Lamare discloses a sheet material packaging blank comprising a bottom panel (7); two external lateral panels (11), each external lateral panel connected by a respective one of first scoring lines (17) to a respective one of a first two opposite edges of the bottom panel; two flaps (14) each flap connected by a respective one of second scoring lines (24) to a respective one of a second two opposite edges of the bottom panel; two intermediate panels (18), each intermediate

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panel connected by a respective one of a third scoring lines to a respective one of the first two opposite edges of the bottom panel of the two external lateral panels; two internal lateral panels (11) each internal panel connected by a respective one of a fourth scoring lines to a respective one of said intermediate panels at an edge of the intermediate panel opposite the external lateral panel, each internal lateral panel being extended, in the direction away from the intermediate panel, by a fixing flap (19), the internal lateral panels further including a cut-out (15). Lamare discloses the claimed invention except for the specifics of the cut-out and the closure panel.

Regarding the specifics of the cut-out, DeNola teaches a package comprising two box sections (30 and 32), each including a cut-out (openings 64 and 62), wherein each opening has at least two locating tongues (two tongues 66 and two tongues 60 in each of the two openings 64 and 62, respectively) juxtaposed to each other and attached to an internal panel at a first end of each tongue for the purpose of adding cushion to protect an article when its placed in the opening. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the cut-outs of Lamare to include two locating tongues in each cut-out as taught by DeNola in order to better protect the article by adding more cushioning.

Regarding the closure panel, DeNola teaches a closure panel (46) for the purpose of closing the top opening of the package to better hold the article in place. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the package of Lamare with a closure panel as

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taught by DeNola in order to close the top opening of the package to better hold the article in place when the sleeve 5 is not in use.

Regarding claims 19-22, Lamare-DeNola discloses a width of the external lateral panel and a width of the internal lateral panel are substantially equal; ends of the external lateral panels adjacent the bottom panel, and ends of the flaps adjacent the bottom panel, are connected in pairs by a gusset; widths of each of the flaps and widths of each of the external lateral panel are substantially equal; and the method of packaging and positioning a circular contour object whose diameter is substantially equal to the length of the square bottom panel.

4. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lamare (EP 0693428) in view of DeNola (US 5,529,187) as applied to claim 1 above, and further in view of Saiki et al. (US 5,829,587). As described above, Lamare-DeNola discloses the claimed invention except for the specific number of locating tongues. However, Saiki teaches a package comprising a box sections (30) including openings (39) with at least four locating tongues (43) for the purpose of securely holding the article within the opening. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the openings of Lamare-DeNola to include at least four locating tongues as taught by Saiki in order to more securely hold the article in place within the openings.



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5. Claims 12-14, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lamare (EP 0693428) in view of DeNola (US 5,529,187) as applied to claims 1 and 16 above, and further in view of Carpenter (US 2,846,132). As described above, Lamare-DeNola discloses the claimed invention except for the specifics of the closure panel. However, Carpenter teaches a package comprising a closure panel (12) including a scoring line (line between 12 and 14) adjacent to a fold-down panel (14) adapted to be superimposed on the front wall of the bottom section, and attachment means (19 and 21) projecting from the edges of the closure panel which cooperate with notches (17 and 20) in the side walls of the bottom section for the purpose of securely holding the package in its closed position. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the device of Lamare-DeNola with a fold down panel, attachment means and notches as taught by Carpenter in order to more securely hold the package closed.

### ***Response to Arguments***

6. Applicant's arguments filed 12/4/2008 have been fully considered but they are not persuasive. Applicant argues that Lamare does not teach or suggest at least two locating tongues disposed in an opening and attached to the internal lateral panel only by an end opposite the bottom panel, said locating tongues being juxtaposed to each other.

Contrary to applicant's argument, DeNola teaches each including an opening (e.g. 64), wherein the opening has two locating tongues (two tongues 66) juxtaposed

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(side by side) to each other and attached the internal panel at one end for the purpose of adding cushion to protect an article when its placed in the opening. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the openings of Lamare to include locating tongues as taught by DeNola in order to better protect the article by adding more cushioning. Regarding the specific attachment of the tongues, it would have been obvious to one having ordinary skill in the art at the time the invention was made to attach the tongues by the end opposite the bottom panel in order to have the desired contact with the object. The tongues perform the same function whether attached to the panel at the sides or at the end. It has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Applicant argues the articulation is located at a distance from the articulation between the first end of the external lateral panel and the bottom panel. Contrary to applicant's argument, the phrase "along the articulation" as claimed is broad. The term "along" can be considered to mean "in line matching the length or direction" (Merriam-Webster Online). The second end of the internal lateral panel of Lamare-DeNola is connected by an articulation to the bottom panel along (in line with) the articulation between the first end of the external lateral panel and the bottom panel. (See Figs. 3 and 5B).

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Reynolds whose telephone number is (571)272-9959. The examiner can normally be reached on Monday-Friday 9:30am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. R./  
Examiner, Art Unit 3728

/Mickey Yu/  
Supervisory Patent Examiner, Art  
Unit 3728